



May 14, 2013

George LeVines
MuckRock News
Dept MR 5144
PO Box 55819
Boston, MA 02205-5819

RE: Records Request – April 30, 2013
Massachusetts Environmental Police
Accident Reports with Personal Injuries

Dear Mr. LeVines:

The Department of Conservation and Recreation (DCR) legal department has been requested by the Office of Law Enforcement (OLE) under the Executive Office of Energy and Environmental Affairs (EOEEA), commonly known as the Massachusetts Environmental Police (MEP), to respond to your email of April 30, 2013 regarding a Public Records Request for “Any lists, databases and inventory rosters containing equipment used in the field of duty (i.e., firearms, protective gear, surveillance equipment, tactical and defense equipment, vehicles, etc.)”

At the outset, the Massachusetts Environmental Police objects to your request on the grounds that it is vague, ambiguous, overly broad, not limited in time and fails to reasonably describe the records sought in order for the MEP to properly respond. Moreover, for reasons more fully articulated below, it is the Department’s position that any responsive documents that may currently exist at this time and do not require the creation of the document(s), are exempt from disclosure pursuant to M.G.L. c. 4. §7(26)(b), (f)and(n).

You are undoubtedly aware that the Massachusetts Environmental Police is a paramilitary police force legislated with broad police powers throughout the Commonwealth. The Massachusetts Environmental Police is tasked with protecting the environment and natural resources of the Commonwealth of Massachusetts through enforcement of laws and regulations. MEP is further charged with protecting the health, safety, and individual rights of the public and preserving our environment for future generations.

The Environmental Crimes Bureau within Massachusetts Environmental Police is part of a unique interagency investigative organization called the "Environmental Crimes Strike Force". Under the direction of the Attorney General and the Secretary of Energy and Environmental Affairs, the Strike Force combines the prosecutory expertise of the Attorney General's Office with the scientific and investigatory skills of the Department of Environmental Protection, the Environmental Police, and the State Police. The Strike Force investigates and prosecutes environmental crimes that have serious

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public health consequences, cases involving illegal hazardous and solid waste disposal, water pollution, air quality violations, illegal pesticide application, and violations of wetland protection statutes.

The Marine Theft Bureau within MEP was established to combat intensifying theft problems involving vessels, motors, electronic devices, and other marine accessories. Marine Theft Bureau personnel work closely with the U.S. Coast Guard, federal enforcement agencies, state and local police, harbor masters and insurance agencies to conduct criminal investigations, prosecute criminals and recover stolen marine equipment.

Massachusetts Environmental Police Officers are tasked with the responsibility of enforcing a broad spectrum of Commonwealth laws and regulations affecting the environment. The Coastal Bureau conducts investigations and enforces laws rules and regulations affecting coastal and offshore waters of the Commonwealth. The Coastal Enforcement Bureau Officers investigate illegal fishing practices, marine theft cases, and enforce boat registration and titling requirements. The Inland Bureau conduct investigations and enforce laws and regulations regarding hunting, fishing, trapping, boating, and off-highway vehicles. Inland Officers with local and state police investigate cases of illegal waste disposal, wetlands violations and other damage to the environment.

Based on the police investigatory and prosecutor responsibilities that directly impact on public health and safety the Office of Law Enforcement has made the determination that your request is not subject to the Public Records Law under the following exceptions:

M.G.L. c.4,§7(26) (b)

The records in question are exempt from disclosure pursuant to M.G.L. c. 4, §7(26)(b), which addresses materials “related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding.”

The context in question is the investigation, enforcement and prosecution of violation of laws that directly affect the health and safety of the environment and the citizens of the Commonwealth of Massachusetts. The records in question include information regarding among other things, information and policies with respect to firearms, tactical and protective equipment, and surveillance equipment utilized by MEP in the course of its investigations and enforcement duties in addition to its interagency coordination with the Environmental Strike Force of the Attorney General. In addition, the information in question would reveal the investigatory and security resources available to and utilized by MEP in carrying out and upholding its very mission, the disclosure of which would significantly impair the proper performance of necessary government functions of the Environmental Police. Requiring the disclosure of such information would affect not only the Environmental Police but also other law enforcement agencies. This request relates to internal practices of MEP, which is necessary for police and safety functions which would be inhibited by disclosure. Knowledge of information of equipment used in police responses will be detrimental to the security of the police officers and the public.

M.G.L. c. 4, §7(26)(f)

M.G.L. c. 4, §7(26)(f) exempts from disclosure “investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.”

The materials requested would include surveillance and other tactical equipment utilized by the Environmental Police not only in its independent investigations but also in coordination with investigations of the Environmental Strike Force as well as joint efforts with the Massachusetts State Police and local police forces. In law enforcement settings, courts have recognized that the investigatory exemption’s purpose is, among other things, preventing the disclosure of confidential investigative techniques, procedures, or sources of information, and the encouragement of witnesses to come forward and speak freely and candidly concerning matters under investigation. Bougas v. Chief of Police of Lexington, 371 Mass. 59, 62 (1976); Globe Newspaper Co. v. Police Commr. of Boston, 648 N.E.2d 419 (1995). To require disclosure would compromise confidential investigations and potentially disclosing things such as tactical protocol, equipment and deployments, as well as investigative techniques and resources. The Massachusetts Environmental Police has a significant interest in ensuring that all such information, remain confidential.

M.G.L. c. 4, §7(26)(n)

M.G.L. c. 4, §7(26)(n) relates to “records, including, but not limited to plans, policies, procedures...which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities...transportation...the disclosure of which...is likely to jeopardize public safety.”

The requested materials are independently exempt pursuant to S. 7(26)(n). Exemption (n) “records, including, but are not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety.”

“A Guide to the Massachusetts Public Records Law” published by William Francis Galvin, Secretary of the Commonwealth Division of Public Records, updated January 2013, states ...“This exemption is intended to secure the safety of persons and public places by restricting access to records that may have been previously open to public inspection.” Providing the requested information from a

George LeVines
MuckRock News
May 14, 2013
Page Page 4 of 4

public safety standpoint would reduce the Office of Law Enforcement's effectiveness for ensuring public safety by revealing what equipment and tactics this agency uses to keep its officers and the Commonwealth's citizens safe.

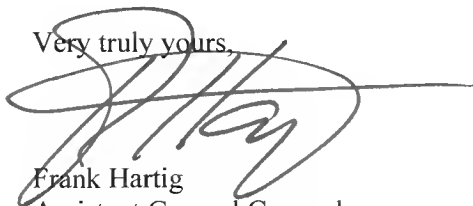
This Exemption (n) allows for the withholding of certain records which if released would undermine public safety. For the reasons stated above the Office of Law Enforcement has determined in their reasonable judgment that the release of the record is likely to jeopardize public safety.

Additionally, absent exemptions, the requested information would require the Office of Law Enforcement to create a public document that does not exist at this time, which the agency is not required to do. Under G.L. c. 4, §7(26), the "mandatory disclosure provision of the Public Records Law only applies to information that is in the custody of the governmental entity at the time the request is received". The Office of Law Enforcement is under no obligation to create a record for a requester.

If you wish to challenge this agency's response, particularly the redacting of information in these documents as exempt from disclosure, you may appeal to the Supervisor of Public Records pursuant to section 10(b) of Chapter 66 of the General Laws, following the procedure set out in 950 CMR section 32.08.

If you have any questions please contact me at 617 626-1313

Very truly yours,



Frank Hartig
Assistant General Counsel

Cc: Lt. Colonel Chris Baker
EOEEA Deputy General Counsel Margaret Callanan